Supreme Court, U.S.
F I L E D
JAN 23 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-632

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1985

CHARLES ATKINS, Commissioner
of the Massachusetts
Department of Public Welfare,
Petitioner,
v.
SANTOS RIVERA, Madeline McKenna,
and all others similarly situated,
Respondents.

On Writ of Certiorari to the
Supreme Judicial Court for the
Commonwealth of Massachusetts

JOINT APPENDIX

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Petition for Certiorari Filed Oct. 11, 1985
Certiorari Granted December 9, 1985

TABLE OF CONTENTS

Relevant Docket Entries:

Superior Court	1
Appeals Court	4
Supreme Judicial Court	5
Complaint (filed May 20, 1983)	8
Answer (filed June 28, 1983)	25
Intervenor's Complaint (filed July 20, 1983)	32
Answer to Intervenor's Complaint (filed Sept. 12, 1983)	48
Motion for Summary Judgment (filed Aug. 8, 1983)	54

Note: Record page references ("R. ___") within the documents set forth in this Joint Appendix are to the "Record Appendix" which was filed in the Massachusetts Appeals Court (see infra, p. 4) and was transferred to the Massachusetts Supreme Judicial Court upon the allowance of the Motion for Direct Appellate Review. The Motion for Summary Judgment was not reproduced in the "Record Appendix."

The following have been omitted from this appendix because they appear on the following pages of the appendix to the Petition for Certiorari:

Administrative Decision (Rivera), Massachusetts Department of Public Welfare (Apr. 27, 1983)	Pet. A46
Administrative Decision (McKenna), Massachusetts Department of Public Welfare (June 7, 1983)	Pet. A54
Opinion of the Hampden Superior Court (Mar. 26, 1984)	Pet. A28
Amended Judgment, Hampden Superior Court (entered May 24, 1984)	Pet. A64
Opinion of the Massachusetts Supreme Judicial Court (June 12, 1985)	Pet. A1
Order of the Massachusetts Supreme Judicial Court (entered June 12, 1985)	Pet. A61
Denial by the Massachusetts Supreme Judicial Court of the Petition for Rehearing (entered Sept. 26, 1985)	Pet. A63

[R. 1] RELEVANT DOCKET ENTRIES

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

HAMPDEN, SS. C.A. No. 83-684

Santos Rivera
v.
Charles Atkins, Commissioner of the Department of Public Welfare

1983	*	* *
May 20	2	Complaint
	*	* *
June 28	4	Answer
June 30	5	Motion of Madeline McKenna for leave to intervene as plff.
July 7	--	End. on # 5 - Allowed (Keady, J.)
	*	* *
July 20	7	Intervenor's Complaint
Aug. 3	8	Stipulation of class numerosity
Aug. 8	9	Plaintiffs' motion for class certification

Aug. 8	10	Plaintiffs' motion for summary judgment
[R. 2]		
Sept. 12	11	Answer to Intervenor's Complaint
	*	* *
Sept. 27	13	Aff't of Mathew Fishman
[Sept. 28 --		Hearing on Motions for Class Certification and for Summary Judgment (Cross, J.)]

1984

[Mar. 26]	14	Rulings on (1) Motions for (a) Class Certification and (b) Summary Judgment and (2) Order for Judgment (Cross, J.)
[R. 3]	*	* *
April 13	17	Aff't of Jolie Pillsbury
	*	* *

April 13	19	Final order judgment (Cross, J.). Notified [counsel].
	*	* *
April 13	20	Deft's Motion for Stay of Judgment Pending Appeal [filed and argued]
April 17	--	End. on # 20 - Allowed (Cross, J.)
April 24	21	Deft's motion to alter or amend judgment
May 4	22	Plffs' assent to [#21]
May 14	--	End. on # 21 - Allowed (Cross, J.)
	*	* *
May 24	24	Amended judgment (Cross, J.). Notified [counsel].
May 29	25	Deft's notice of appeal from amended judgment
	*	* *
July 6	26	Notice of Assembly of Record on Appeal

COMMONWEALTH OF MASSACHUSETTS
THE APPEALS COURT

A.C. No. 84-752

Santos Rivera
v.
Charles Atkins, Commissioner of the Department of Public Welfare

* * *

1984

2	July 16	Entered
3	Aug. 6	Parties' Joint Application for Direct Appellate Review, filed.
4	Aug. 21	Appellant's Certificate of Service (Brief and Record Appendix), filed
5	Sept. 24	Appellee's Certificate of Service (Brief), filed
-	Sept. 27	ORDER . . . of SJC Application for Direct Appellate Review - Allowed

SUPREME JUDICIAL COURT
for the
COMMONWEALTH OF MASSACHUSETTS

S.J.C. - 3667

Santos Rivera
v.
Charles Atkins, Commissioner of the Department of Public Welfare

* * *

1984

Oct. 2 ENTERED

* * *

Oct. 24 Service of Reply Brief for appellant . . .

1985

[Jan. 9 Argued]

* * *

June 12 We reverse that portion of the judgment which determined that the department violated G.L. c. 118E, § 10(5), through the application of a flat $74 disregard in determining AFDC-

related MA income eligibility, and we affirm that portion of the judgment which determined that the department's use of a six-month budget period for spend down purposes violated 42 U.S.C. § 1396(a)(10)-(C)(i)(III). We remand the matter to the Superior Court for further action consistent with the opinion.

Rescript June 12, 1985.

Reasons as on file.

* * *

July 5 MOTION For a STAY of RESCRIPT filed . . .

* * *

Aug. 5 MOTION To STAY RESCRIPT ALLOWED

Aug. 16 Petition for Rehearing filed . . .

Sept. 26 Petition for Rehearing - DENIED.

* * *

Oct. 10 ORDER. . . . Rescript stayed pending decision by U.S. Supreme Court.

[R. 4]

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

HAMPDEN, SS. SUPERIOR COURT DEPARTMENT
HAMPDEN DIVISION
C.A. NO.

SANTOS RIVERA, individually and on behalf of all others similarly situated, Plaintiffs v. CHARLES ATKINS, as Commissioner of the Department of Public Welfare, Defendant	CLASS ACTION COMPLAINT

I. PRELIMINARY STATEMENT

Plaintiff Santos Rivera, a working mother, and her two children are being denied Medicaid benefits they sorely need and for which they would be eligible but for a statutorily unauthorized budgeting

procedure employed by the Department of Public Welfare (hereinafter Department). Ms. Rivera's income is somewhat higher than that permissible for automatic Medicaid eligibility and she therefore has, in Medicaid parlance, a "spend-down" amount that she must spend on medical services before qualifying for Medicaid. The allowable amount of income for Medicaid purposes is computed on a monthly basis. [R. 5] However, in determining the eligibility of Ms. Rivera and her children, the Department incorrectly counted her gross rather than net income, and then multiplied the resulting monthly excess (the spend-down) by six. This illegal method of calculation has created a situation in which Ms. Rivera cannot afford to acquire medical care for herself or her children.

Plaintiff seeks an order affording her, and the class she seeks to represent, a monthly spend-down, and a declaration that the Department's method of computing Medicaid eligibility contravenes the provisions of M.G.L. ch. 118E, §10(5) and 42 U.S.C. §§1396a(a)(10)-(C)(i)(III) and 1396a(a)(17).

II. JURISDICTION

2. Jurisdiction is conferred upon this Court pursuant to M.G.L. ch. 30A, ch. 231A and ch. 212, §4, which provide for judicial review of an agency action and declaratory and injunctive relief, respectively.

III. PARTIES

3. Plaintiff Santos Rivera is a citizen of the United States and resides

with her two children at 3421 Main Street, Springfield, MA, 01107.

[R. 6] 4. Defendant Charles Atkins is the Commissioner of the Department of Public Welfare for the Commonwealth of Massachusetts. Pursuant to M.G.L. ch. 18, he is responsible for the direction, supervision and control of the Department. His business address is 600 Washington Street, Boston, MA, 02111.

IV. CLASS ALLEGATIONS

5. The plaintiff brings this action on behalf of herself and all others similarly situated pursuant to Mass. R. Civ. P. 23(a) and (b). Plaintiff seeks to represent two distinct classes. The first class consists of all those medically needy working applicants for or recipients of Medicaid who have been, are being or will be subjected to the

defendant's practice of counting for Medicaid eligibility purposes their gross income without disregarding at least the amount withheld from their checks for taxes and social security payments. The second class consists of all those "AFDC-related" medically needy applicants for or recipients of Medicaid who have been, are being or will be subjected to the defendant's six-month spend-down requirement in order to qualify or requalify for Medicaid benefits.

6. The classes are so numerous that joinder of all parties is impracticable, there are questions of law and fact common to each class, the claims of the plaintiff are typical [R. 7] of those of each class, and plaintiff will fairly and adequately represent the interests of each class.

V. FACTS

THE MEDICALLY NEEDY MEDICAID PROGRAM

7. Medicaid is a cooperative federal-state cost-sharing program designed to enable each state to furnish medical assistance to blind, aged, disabled, or dependent persons whose income is insufficient to meet the costs of necessary medical services. 42 U.S.C. §1396.

8. Medicaid recipients in Massachusetts receive an identification card from the Department to verify their participation in the program and to provide access to medical care.

9. Providers of medical services bill and receive payment from the Department for any covered services furnished to eligible persons presenting identification cards.

10. The Department has established a program, pursuant to 42 U.S.C. §1396a(a)(10), under which individuals and families who meet the status requirements for eligibility for either AFDC or Supplemental Security Income (SSI), but who have too much income to qualify them for cash assistance grants, may still qualify for Medicaid if their medical expenses consume their "excess" income. People who qualify for medical assistance in this manner are known as the "medically needy".

[R. 8] 11. The amount of a medically needy individual's income which is designated as "excess" by the Department and which must be spent on medical care prior to qualifying for Medicaid is called a "spend-down".

12. In order to determine the amount of a person's spend-down, the Department

compares his/her monthly income to a monthly income standard table. The amount of income above the listed standard is then multiplied by six and the resulting number represents the person's spend-down.

13. Under the Department's system of calculation, an applicant or recipient is therefore required to spend for medical services six times his/her monthly excess before (s)he is determined to be eligible for Medicaid.

14. After medical expenses have been incurred in an amount equal to the spend-down, a Medicaid card is issued and eligibility is established for the remainder of the period of six months from the date the spend-down began.

15. At the end of this six-month period, the recipient is terminated from Medicaid and must spend down according

to the formula described above to regain eligibility.

16. In computing the amount of income that a working applicant for or recipient of Medicaid has available, the Department counts that person's gross income, without deducting the amount withheld from each check for taxes and social security payments.

[R. 9] 17. Eligibility for persons applying for or receiving AFDC is determined by measuring the income received by an individual or family in a single month against the cash assistance standard for one month. 42 U.S.C. 602(a)-(13).

18. Pursuant to 42 U.S.C. §1396a(a)(10)(C)(i)(III), added to Title XIX of the Social Security Act by the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982, when a state chooses to

provide benefits to the medically needy, as Massachusetts has done, its state Medicaid plan must set forth:

> (III) the single standard to be employed in determining income and resource eligibility... and the methodology to be employed in determining such eligibility, ... which shall be the same methodology which would be employed under the appropriate State plan (described in subparagraph (A)(i) [i.e., SSI or AFDC] to which such group is most closely categorically related... (emphasis added)

19. In determining eligibility for medical assistance, a state is required by 42 U.S.C. §1396a(a)(17) to:

> ... include reasonable standards (which shall be comparable for all groups...) for determining eligibility for and the extent of medical assistance under the plan which (A) are consistent with the objectives of this subchapter, (B) provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient and... (C) provide

> for reasonable evaluation of any such income or resources, ...

[R. 10] 20. Pursuant to 42 Code of Federal Regulations §435.831, a state "must use a prospective period of not more than 6 months to compute income."

THE PLAINTIFF

21. Santos Rivera works full-time for the John R. Lyman Co. in Chicopee, Mass. and grosses $152.00 per week, of which, after withholdings for taxes and social security payments, she takes home $128.20.

22. Ms. Rivera receives no medical benefits from her job, either for herself or her two minor children.

23. Because Ms. Rivera's income is slightly too "high" to qualify her family automatically for Medicaid, she is considered an AFDC-related medically needy individual.

24. Ms. Rivera applied for Medicaid on January 13, 1983, but was denied benefits on February 13, 1983 because the Department determined that her family had "excess" income of $100.30 per month.

25. Because of her excess income, Ms. Rivera was told by the Department that she had to spend $601.80 (her monthly excess times six) on medical needs before her family would qualify for Medicaid.

26. In the month of February, 1983, Ms. Rivera incurred hospital bills of $314.00, an amount equal to almost half of her monthly income, but the Department would pay no part of those charges due to its six month spend-down policy. [R. 11] 27. Ms. Rivera has virtually no savings, and certainly nowhere near

enough to meet the $601.80 spend-down imposed by the Department.

28. On March 28, 1983, Ms. Rivera appealed the Department's refusal to provide her family with Medicaid, and a hearing was held on April 14, 1983.

29. By decision dated April 27, 1983 (annexed hereto as Exhibit A), the Department's hearing officer upheld the defendant's method of counting earned income and of computing a person's spend-down. Ms. Rivera's appeal was therefore denied.

VI. LEGAL CLAIMS

30. Defendant's policy and practice of counting the gross income of working applicants for or recipients of Medicaid without disregarding the amounts withheld from such persons' checks for taxes and social security payments violates M.G.L. ch. 118E, §10(5).

31. Defendant's policy and practice of using a six month period for calculating the income of AFDC-related medically needy applicants for and recipients of Medicaid violates 42 U.S.C. §1396a(a)(10)(C)(i)(III) insofar as it employs a different budgeting methodology to determine their Medicaid eligibility than is used to determine eligibility for the AFDC program.

[R. 12] 32. Defendant's policy and practice of using a six month period for calculating the income of AFDC-related medically needy applicants for and recipients of Medicaid violates 42 U.S.C. §1396a(a)(17) because it utilizes a standard for determining eligibility which:

(a) is not comparable to that used to determine AFDC eligibility;

(b) is not reasonable;

(c) is not consistent with the objectives of the Medicaid Act;

(d) does not provide for reasonable evaluation of income and resources.

33. Defendant's policy and practice, to the extent it denies plaintiff rights secured by 42 U.S.C. §§1396a(a)(10)-(C)(i)(III) and 1396a(a)(17), violates 42 U.S.C. §1983.

VII. PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays that this Court:

1. Certify this case as a proper class action;

2. Declare that the defendant's policy and practice of using a six month period for calculating the income of "AFDC-related" medically needy applicants for and recipients of Medicaid violates

42 U.S.C. §§1396a(a)(10)(C)(i)(III) and 1396a(a)(17), and thereby 42 U.S.C. §1983.

[R. 13] 3. Declare that defendant's policy and practice of counting all of the earnings of a working applicant for or recipient of Medicaid without disregarding amounts withheld for taxes and social security payments violates M.G.L. ch. 118E, §10(5);

4. Permanently enjoin the defendant from:

(a) using a longer period for calculating the income of "AFDC-related" medically needy applicants for and recipients of Medicaid than is used for purposes of determining eligibility for the AFDC program; and

(b) including as countable income for Medicaid purposes amounts withheld for taxes and social security payments from the checks of working applicants for or recipients of Medicaid.

5. Grant plaintiffs the cost of this action, including reasonable attorney's fees pursuant to 42 U.S.C. §188; and

6. Grant such other and further relief as the Court deems just and appropriate.

s/
Steven A. Hitov
Western Mass. Legal Services
145 State Street
Springfield, MA 01103
(Tel. (413) 781-7814

Dated: May 17, 1983

[Exhibit A to the Complaint, the Administrative Decision of the Massachusetts Department of Public Welfare, Division of Hearings, is reproduced at Pet. A46-A53.]

[R. 16]

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

HAMPDEN, SS. SUPERIOR COURT
C.A. NO. 83-684

SANTOS RIVERA,

Plaintiff

v.

CHARLES ATKINS,

Defendant

ANSWER

The defendant Charles M. Atkins, as Commissioner of the Department of Public Welfare, answers the plaintiff's Complaint as follows:

FIRST DEFENSE

To the extent that the Complaint is based upon Mass. G.L. c. 30A, the defendant submits attached hereto a certified

copy of the record of the administrative proceedings, pursuant to Mass. G.L. c. 30A, § 14(4).

SECOND DEFENSE

To the extent that the Complaint purports to be brought other than pursuant to c. 30A, it fails to state a claim upon which relief may be granted.

THIRD DEFENSE

The defendant answers the numbered paragraphs of the plaintiff's Complaint as follows:

[R. 17] **Preliminary Statement**

1. The "preliminary statement" is a characterization of the action replete with legal conclusions, and therefore requires no response, and otherwise is denied.

Jurisdiction

2. The defendant admits that this Court has jurisdiction pursuant to c. 30A, and denies the remaining allegations of paragraph two of the Complaint.

Parties

3. The defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph three of the Complaint.

4. Admitted.

Class Allegations

5. The defendant admits that the plaintiff seeks to bring this action as a class action, but denies that there is any legal or factual basis therefor. Except as admitted herein, the defendant denies the allegations contained in paragraph five of the Complaint.

6. Denied.

The Medically Needy Medicaid Program

7. The allegations contained in paragraph seven of the Complaint are conclusions of law requiring no response.

8. Admitted.

9. Admitted.

[R. 18] 10. The defendant admits that the Department has undertaken to provide Medical Assistance, at its option under 42 U.S.C. § 1396a(a)(10), to certain individuals and families who do not qualify for AFDC or SSI, as more particularly set forth and defined in various statutes and regulations, which speak for themselves. Except as admitted herein, the defendant denies the allegations contained in paragraph ten of the Complaint.

11-16. The defendant says that the allegations of paragraphs eleven through

sixteen of the Complaint are characterizations of the requirements of statutes and regulations defining and governing the defendant's provision of Medical Assistance to certain families and individuals who do not qualify for AFDC or SSI, and that such statutes and regulations speak for themselves. Except as admitted herein, the defendant denies the allegations contained in paragraphs eleven through sixteen of the Complaint.

17. The allegations contained in paragraph seventeen of the Complaint are conclusions of law requiring no response, and otherwise are denied.

18. 42 U.S.C. § 1396a(a)(10)(C)-(i)(III), as amended by the Tax Equity and Fiscal Responsibility Act of 1982 is a writing which speaks for itself.

19. 42 U.S.C. § 1396a(a)(17) is a writing which speaks for itself.

[R. 19] 20. 42 C.F.R. § 435.831 is a writing which speaks for itself.

The Plaintiff

21-29. Except as established by the administrative record and decision attached hereto, the Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs twenty-one through twenty-nine of the Complaint.

Legal Claims

30. Denied.

31. Denied.

32. Denied.

33. Denied.

FOURTH DEFENSE

The defendant says that the regulations and practices challenged by the

Complaint comport with federal and state law, to the extent applicable.

By his attorneys,

FRANCIS X. BELLOTTI
ATTORNEY GENERAL

s/_____
H. Reed Witherby
Assistant Attorney General
Government Bureau
One Ashburton Place, Room 2019
Boston, Massachusetts 02108
(617) 727-1020

Date: June 27, 1983

[The certified copy of the Administrative Record which was attached to the Answer is reproduced at R. 20-75.]

[R. 76]

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT

HAMPDEN, SS. SUPERIOR COURT DEPARTMENT
HAMPDEN DIVISION
C.A. No. 83-684

MADELINE MCKENNA, Plaintiff v. CHARLES ATKINS, as Commissioner of the Department of Public Welfare, Defendant	INTERVENOR'S COMPLAINT

I. PRELIMINARY STATEMENT

Plaintiff Madeline McKenna, a working mother, and her child are being denied Medicaid benefits they sorely need and for which they would be eligible but for a statutorily unauthorized budgeting procedure employed by the Department of Public Welfare (hereinafter Department).

Ms. McKenna's income is somewhat higher than that permissible for automatic Medicaid eligibility and she therefore has, in Medicaid parlance, a "spend-down" amount that she must spend on medical services before qualifying for Medicaid. The allowable amount of income for Medicaid purposes is computed on a monthly basis. [R. 77] However, in determining the eligibility of Ms. McKenna and her child, the Department incorrectly counted her gross rather than net income, and then multiplied the resulting monthly excess (the spend-down) by six. This illegal method of calculation has created a situation in which Ms. McKenna cannot afford to acquire medical care for herself or her child.

Plaintiff seeks an order affording her a monthly spend-down, and a decla-

ration that the Department's method of computing Medicaid eligibility contravenes the provisions of M.G.L. ch. 118E, §10(5) and 42 U.S.C. §§1396a(a)(10)(C)-(i)(III) and 1396a(a)(17).

II. JURISDICTION

2. Jurisdiction is conferred upon this Court pursuant to M.G.L. ch. 30A, ch. 231A and ch. 212, §4, which provide for judicial review of an agency action and declaratory and injunctive relief, respectively.

III. PARTIES

3. Plaintiff Madeline McKenna is a citizen of the United States and resides with her child at 14 Palmer Road, Three Rivers, MA 01080.

[R. 78] 4. Defendant Charles Atkins is the Commissioner of the Department of

Public Welfare for the Commonwealth of Massachusetts. Pursuant to M.G.L. ch. 18, he is responsible for the direction, supervision and control of the Department. His business address is 600 Washington Street, Boston, MA, 02111.

IV. FACTS

THE MEDICALLY NEEDY MEDICAID PROGRAM

5. Medicaid is a cooperative federal-state cost-sharing program designed to enable each state to furnish medical assistance to blind, aged, disabled, or dependent persons whose income is insufficient to meet the costs of necessary medical services. 42 U.S.C. §1396.

6. Medicaid recipients in Massachusetts receive an identification card from the Department to verify their participation in the program and to provide access to medical care.

7. Providers of medical services bill and receive payment from the Department for any covered services furnished to eligible persons presenting identification cards.

8. The Department has established a program, pursuant to 42 U.S.C. §1396a(a)(10), under which individuals and families who meet the status requirements for eligibility for either AFDC or Supplemental Security Income (SSI), but who have too [R. 79] much income to qualify them for cash assistance grants, may still qualify for Medicaid if their medical expenses consume their "excess" income. People who qualify for medical assistance in this manner are known as the "medically needy".

9. The amount of a medically needy individual's income which is designated

as "excess" by the Department and which must be spent on medical care prior to qualifying for Medicaid is called a "spend-down".

10. In order to determine the amount of a person's spend-down, the Department compares his/her monthly income to a monthly income standard table. The amount of income above the listed standard is then multiplied by six and the resulting number represents the person's spend-down.

11. Under the Department's system of calculation, an applicant or recipient is therefore required to spend for medical services six times his/her monthly excess before (s)he is determined to be eligible for Medicaid.

12. After medical expenses have been incurred in an amount equal to the spend-

down, a Medicaid card is issued and eligibility is established for the remainder of the period of six months from the date the spend-down began.

13. At the end of this six-month period, the recipient is terminated from Medicaid and must spend down according to the formula described above to regain eligibility.

[R. 80] 14. In computing the amount of income that a working applicant for or recipient of Medicaid has available, the Department counts that person's gross income, without deducting the amount withheld from each check for taxes and social security payments.

15. Eligibility for persons applying for or receiving AFDC is determined by measuring the income received by an individual or family in a single month

against the cash assistance standard for one month. 42 U.S.C. 602(a)(13).

16. Pursuant to 42 U.S.C. §1396a(a)(10)(C)(i)(III), added to Title XIX of the Social Security Act by the Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982, when a state chooses to provide benefits to the medically needy, as Massachusetts has done, its state Medicaid plan must set forth:

> (III) the single standard to be employed in determining income and resource eligibility... and the methodology to be employed in determining such eligibility, ... which shall be the same methodology which would be employed under the appropriate State plan (described in subparagraph (A)(i) [i.e., SSI or AFDC] to which such group is most closely categorically related... (emphasis added)

17. In determining eligibility for medical assistance, a state is required by 42 U.S.C. §1396a(a)(17) to:

> ... include reasonable standards (which shall be comparable for all groups...) for determining eligibility for and the extent of medical assistance under the plan which (A) are consistent with the objectives of this [R. 81] subchapter, (B) provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the ap- plicant or recipient and... (C) provide for reasonable evaluation of any such income or resources, ...

18. Pursuant to 42 Code of Federal Regulations §435.831, a state "must use a prospective period of not more than 6 months to compute income."

THE PLAINTIFF

19. On September 11, 1982 Madeline McKenna began work full-time for Pioneer Valley Plastics Co., Three Rivers, MA and currently grosses $140.00 per week, of which, after withholdings for taxes

and social security payments, she takes home $106.89.

20. Ms. McKenna receives no medical benefits from her job, either for herself or her child.

21. Because Ms. McKenna's income is slightly too "high" to qualify her family automatically for Medicaid, she is considered an AFDC-related medically needy individual.

22. Prior to starting work, Ms. McKenna received AFDC benefits to support herself and her family. As a result of her earnings from her job, the AFDC benefits were terminated in December of 1982 but Medicaid benefits continued for four months in accordance with 106 C.M.R. 504.110.

[R. 82] 23. On April 31, 1983 the McKenna family's Medicaid benefits

stopped. Ms. McKenna reapplied for Medicaid but was denied because of "excess" income of $106.66 per month.

24. Because of her excess income, Ms. McKenna was told by the Department that she had to spend $639.96 (her monthly excess times six) on medical needs before her family would qualify for Medicaid.

25. Ms. McKenna has virtually no savings, and certainly nowhere near enough to meet the $639.96 spend-down imposed by the Department.

26. On April 18, 1983, Ms. McKenna appealed the Department's refusal to provide her family with Medicaid, and a hearing was held in front of a Department referee.

27. By decision dated June 7, 1983 (annexed hereto as Exhibit A), the De-

partment's appeals referee upheld the defendant's method of counting earned income and of computing a person's spend-down. Ms. McKenna's appeal was therefore denied.

VI. LEGAL CLAIMS

28. Defendant's policy and practice of counting the gross income of working applicants for or recipients of Medicaid without disregarding the amounts withheld from such persons' checks for taxes and social security payments violates M.G.L. ch. 118E, §10(5).

[R. 83] 29. Defendant's policy and practice of using a six month period for calculating the income of AFDC-related medically needy applicants for and recipients of Medicaid violates 42 U.S.C. §1396a(a)(10)(C)(i)(III) insofar as it

employs a different budgeting methodology to determine their Medicaid eligibility than is used to determine eligibility for the AFDC program.

30. Defendant's policy and practice of using a six month period for calculating the income of AFDC-related medically needy applicants for and recipients of Medicaid violates 42 U.S.C. §1396a(a)(17) because it utilizes a standard for determining eligibility which:

(a) is not comparable to that used to determine AFDC eligibility;

(b) is not reasonable;

(c) is not consistent with the objectives of the Medicaid Act;

(d) does not provide for reasonable evaluation of income and resources.

31. Defendant's policy and practice, to the extent it denies plaintiff rights

secured by 42 U.S.C. §§1396a(a)(10)(C)-(i)(III) and 1396a(a)(17), violates 42 U.S.C. §1983.

[R. 84] VI. PRAYERS FOR RELIEF

WHEREFORE, plaintiff respectfully prays that this Court:

1. Declare that the defendant's policy and practice of using a six month period for calculating the income of "AFDC-related" medically needy applicants for and recipients of Medicaid violates 42 U.S.C. §§1396a(a)(10)(C)(i)(III) and 1396a(a)(17), and thereby 42 U.S.C. §1983.

2. Declare that defendant's policy and practice of counting all of the earnings of a working applicant for or recipient of Medicaid without disregarding amounts withheld for taxes and social

security payments violates M.G.L. ch. 118E, §10(5);

3. Permanently enjoin the defendant from:

(a) using a longer period for calculating the income of "AFDC-related" medically needy applicants for and recipients of Medicaid than is used for purposes of determining eligibility for the AFDC program; and

(b) including as countable income for Medicaid purposes amounts withheld for taxes and social security payments from the checks of working applicants for or recipients of Medicaid.

4. Grant plaintiff the cost of this action, including reasonable attorney's fees pursuant to 42 U.S.C. §1988; and

[R. 85] 5. Grant such other and further relief as the Court deems just and appropriate.

s/_____
Suzanne Harris
Western Mass. Legal Services
145 State Street
Springfield, MA 01103
Tel. (413) 781-7814

Dated: June 29, 1983

[Exhibit A to the Intervenor's Complaint, the Administrative Decision of the Massachusetts Department of Public Welfare, Division of Hearings, is reproduced at Pet. A54-A60.]

[R. 88]

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS. SUPERIOR COURT
C.A. No. 83-684

SANTOS RIVERA, et al.,

Plaintiffs

v.

CHARLES ATKINS,

Defendant

ANSWER TO INTERVENOR'S COMPLAINT

The defendant Charles M. Atkins, as Commissioner of the Department of Public Welfare, answers the Complaint of Intervenor Madeline McKenna as follows:

FIRST DEFENSE

To the extent that the Complaint is based upon Mass. G.L. c. 30A, the defendant submits attached hereto a certified

copy of the record of the administrative proceedings, pursuant to Mass. G.L. c. 30A, § 14(4).

SECOND DEFENSE

To the extent that the Complaint purports to be brought other than pursuant to c. 30A, it fails to state a claim upon which relief may be granted.

THIRD DEFENSE

The defendant answers the numbered paragraphs of the Intervenor's Complaint as follows:

[R. 89] Preliminary Statement

1. The "preliminary statement" is a characterization of the action replete with legal conclusions, and therefore requires no response, and otherwise is denied.

Jurisdiction

2. The defendant admits that this Court has jurisdiction pursuant to c. 30A, and denies the remaining allegations of paragraph two of the Complaint.

Parties

3. The defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph three of the Complaint.

4. Admitted.

The Medically Needy Medicaid Program

5. The allegations contained in paragraph five of the Complaint are conclusions of law requiring no response.

6. Admitted.

7. Admitted.

8. The defendant admits that the Department has undertaken to provide Medical Assistance, at its option under 42

U.S.C. § 1396a(a)(10), to certain individuals and families who do not qualify for AFDC or SSI, as more particularly set forth and defined in various statutes and regulations, which speak for themselves. Except as admitted herein, the defendant denies the allegations contained in paragraph eight of the Complaint.

[R. 90] 9-14. The defendant says that the allegations of paragraphs nine through fourteen of the Complaint are characterizations of the requirements of statutes and regulations defining and governing the defendant's provision of Medical Assistance to certain families and individuals who do not qualify for AFDC or SSI, and that such statutes and regulations speak for themselves. Except as admitted herein, the defendant denies

the allegations contained in paragraphs nine through fourteen of the Complaint.

15. The allegations contained in paragraph fifteen of the Complaint are conclusions of law requiring no response, and otherwise are denied.

16. 42 U.S.C. § 1936a(a)(10)(C)-(i)(III), as amended by the Tax Equity and Fiscal Responsibility Act of 1982 is a writing which speaks for itself.

17. 42 U.S.C. § 1396a(a)(17) is a writing which speaks for itself.

18. 42 C.F.R. § 435.831 is a writing which speaks for itself.

The Plaintiff

19-27. Except as established by the administrative record and decision attached hereto, the Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph nineteen

through twenty-seven of the Complaint.

[R. 91] Legal Claims

28. Denied.

29. Denied.

30. Denied.

31. Denied.

FOURTH DEFENSE

The defendant says that the regulations and practices challenged by the Complaint comport with federal and state law, to the extent applicable.

By his attorneys,

FRANCIS X. BELLOTTI
ATTORNEY GENERAL

s/
H. Reed Witherby
Assistant Attorney General
Government Bureau
One Ashburton Place, Room 2019
Boston, Massachusetts 02108
(617) 727-1020

Date: Sept. 9, 1983

[The certified copy of the Administrative Record which was attached to the Answer to Intervenor's Complaint is reproduced at R. 92-129.]

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS. SUPERIOR COURT
C.A. No. 83-684

SANTOS RIVERA, ET AL. Plaintiffs V. CHARLES ATKINS, Defendant	MOTION FOR SUMMARY JUDGMENT

Plaintiffs move this Court for an order of summary judgment in their favor in this case upon the grounds that there are no material issues of fact in dispute and that plaintiffs are entitled to such relief as a matter of law, as is more fully set out in their memorandum submitted herewith.

PLAINTIFFS,

By their attorney,

s/_____

Steven A. Hitov
Western Massachusetts
Legal Services, Inc.
145 State Street
Springfield, MA 01103
(413) 781-7814

August 4, 1983